

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, June 21, 2004, at 9:00 a.m.
State Capitol Building, Room 303

PRESENT: Lt. Governor Karl Ohs, Superintendent of Public Instruction Linda McCulloch, State Auditor John Morrison, Attorney General Mike McGrath, and Secretary of State Bob Brown

Mr. Morrison made a correction to the May 2004 minutes. He cited an error on page 5, third paragraph. The language should read: "...the \$4.39/~~AUM~~ acre figure equates to somewhere around \$16/AUM rate."

Motion was made by Mr. Morrison to approve the amended minutes of the Board of Land Commissioners' meeting held May 17, 2004. Seconded by McGrath. Motion carried unanimously.

BUSINESS TO BE CONSIDERED

The next three items come from the Department of Fish, Wildlife and Parks. Consistent with state law, transactions above a certain threshold are required to come before the Board of Land Commissioners for approval.

604-1 DFWP – BLACKFOOT-CLEARWATER ACQUISITION FROM ROCKY MOUNTAIN ELK FOUNDATION

This is a request for approval for the acquisition from the Rocky Mountain Elk Foundation for some parcels of land associated with the Blackfoot-Clearwater Game Range. Mr. Clinch said consolidation of the Blackfoot-Clearwater Game Range between DNRC, FWP, Plum Creek Timber, and other interests has been an on-going program for a number of years. This particular proposal is the third in a series, we refer to it as Phase III.

Glen Erickson, DFWP, said we're here today to discuss the Blackfoot-Clearwater acquisition from the Rocky Mountain Elk Foundation. Basically, it is a purchase at a cost of \$3.3 million, and we're using our Habitat Montana funding which is designated for wildlife habitat purchases, from the Rocky Mountain Elk Foundation. We're hoping, and we have submitted and received tentative approval, for reimbursement for that expenditure from the Habitat Montana funding from the Forest Legacy Grant with the U.S. Forest Service. We hope to have that approval by October 2004. This involves 3,834 acres in Missoula and Powell Counties within the existing management area. Missoula County has approximately 2,900 acres and Powell County has 910 acres.

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Within the existing Blackfoot-Clearwater Wildlife Management Area, we completed a draft EA in May and distributed it at a public hearing. A final EA and Decision Notice was issued on May 21st. The Fish, Wildlife and Parks Commission approved this on June 10, 2004. The appraised value of this property is \$4,566,000. It has a hunting season permit only for the Blackfoot-Clearwater area. This has been a long term acquisition project where we've had several phases, its been over five years of work with DNRC, Rocky Mountain Elk Foundation, Plum Creek Timberlands, Five Valleys Land Trust, Lolo National Forest, and others. It is a 50th anniversary project for the department and those cooperators for the Blackfoot-Clearwater Wildlife Management Area, in trying to get all those lands under consistent ownership, or at least management. We brought to this Board a previous Conservation Easement with DNRC which was approved, and we're moving forward with that. The timber management in there is somewhat unique in that we're trying to work with DNRC with future timber management across all of those parcels doing different harvest regimes on DNRC then paying back the differences if we have to reduce harvests for wildlife purposes and reimburse DNRC for those lost revenues. It is a unique opportunity for DFWP to work together with everybody and we hope the Board will look favorably on this purchase.

Motion was made by Mr. McGrath to approve the Blackfoot-Clearwater acquisition. Seconded by Mr. Morrison. Motion carried unanimously.

604-2 ~~DFWP - WEAVER SLOUGH ACQUISITION~~ **WITHDRAWN**
 DFWP - RINGNECK RANCH ACQUISITION

Mr. Clinch said originally this item included two acquisitions, the Weaver Slough acquisition and the Ringneck Ranch acquisition. There are a number of issues that have not matured relative to the Weaver Slough acquisition and DFWP is requesting it not be considered today. This next discussion item will be focused on the Ringneck Ranch acquisition.

Glen Erickson, DFWP, said the Ringneck Ranch acquisition was submitted originally with the Weaver Slough project, but we still have some issues to work out with the terms of the easement and some of the funding so we thought we'd move forward with Ringneck and bring back the Weaver Slough project in July. The Ringneck Ranch is an acquisition of 200+ acres of ranch property located in Lake County which adjoins our Ninepipes Wildlife Management Area in the Mission Valley. This is the second highest priority of the migratory bird wetland project in Region I. Under a recent appraisal, the cost of the project was determined to be \$450,000. We would use North American Wetlands Conservation Act funds in a grant that was recently bestowed to the Flathead Land Trust and the glaciated valleys of Northwest Montana in a partnership and we would use a balance of \$113,000+ dollars to be funded through the Montana Migratory Bird Stamp funds. This is a request for final approval of an acquisition that is fee title.

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We had a draft EA that was distributed, a 30-day comment period, the Decision Notice was released, and we received Fish, Wildlife and Parks Commission approval.

Motion was made by Mr. Brown to approve the Ringneck Ranch acquisition. Seconded by Ms. McCulloch. Motion carried unanimously.

604-3 DFWP – ALBERTON GORGE LAND EXCHANGE

Mr. Clinch said this item involves a particular stretch of the Clark Fork River west of Missoula, the Alberton Gorge area, and is the result of coordination and work by four separate parties along this seven miles of river corridor. NorthWestern Energy, U.S. Dept. Agriculture – U.S. Forest Service, Five Valleys Land Trust, and the Montana Department of Fish, Wildlife and Parks have worked on this project. It has taken a lot of work by all of those parties to put together a package that is going to put this property into a management scenario that will perpetually protect it well into the future.

Glen Erickson, DFWP, said the Alberton Gorge land exchange is a complex project. It involves four parties, and takes place on a seven mile stretch of the Clark Fork River and it places into FWP ownership most of the Gorge and some of the adjacent DNRC lands. It started with the River Network Organization and was then transferred to the Five Valleys Land Trust. The Forest Service has been an integral part of this project. The Alberton Gorge land exchange is going to conserve the natural and recreational values of the Gorge for the public, enhancing the fishing access along the Clark Fork River, and consolidating land ownership for FWP and the Forest Service. The Five Valleys Land Trust, a Missoula-based non-profit organization, will first purchase 305 acres of the Alberton Gorge River corridor from NorthWestern Energy and then transfer that land to FWP. FWP will then transfer four parcels to the Forest Service, Frank Lake Fishing Access Site, Tizer Lake Fishing Access Site, Park Lake Fishing Access Site, and the Natural Bridge recreation area. Each of these parcels is surrounded by national forest land and will continue to be managed for public recreation and resource conservation. To equalize the land exchange, Five Valleys Land Trust will receive 566 acres of land near Tarkio from the Forest Service, and the former Region V FWP headquarters tract in Billings. Because the Frank Lake Fishing Access Site was purchased with Land and Water Conservation Funds, we are encumbering 103 acres of the 305 Alberton Gorge River corridor to make up that difference. The values associated with the Ralph's Takeout are going to replace Frank Lake as the main river access point for the public who have small craft. In addition, FWP's Park Lake and Tizer Lake were acquired with DJ and WB funds and we identified three sites along the river to encumber those as replacement properties for the WB funds. The only reason Region V headquarters would be transferred to Five Valleys Land Trust is because they would sell the headquarters' property, 1998 appraised value at \$150,000. The land exchange actually only involves a need for \$104,000, and in order to get our fair market value, Five Valleys Land Trust has agreed to provide us storage either through lease or

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through future purchase within Billings for our headquarters' personnel. The only other thing that is different here, is the Park Lake tract. It has a high-hazard dam there which is owned by FWP. We are in the process now of working with the dam safety people both within the Forest Service and DNRC to upgrade that dam so the Forest Service can take over that property. That is in progress now. We will hire a consultant and should be able to begin repairs in early September. Once those repairs are made, Park Lake would transfer to the Forest Service and Middle Osprey would transfer to FWP. This is the second phase of the whole project and we are asking for approval of that also at this time, even though it won't take place until next spring when the process culminates. This project has a fairly lengthy comment period and it went through several rounds of different types of exchanges and purchases, and finally came to this particular proposal. We did have an issue raised by the Mineral County Commissioners over Tarkio Section 35, and we received a letter from the county. The first paragraph states, "This is to guarantee to you that the Mineral County Board of Commissioners endorse the proposed land exchange in Mineral County that would preserve the Alberton Gorge area of the Clark Fork River and would produce an income that would balance public and private ownership within Mineral County." This is related to the commitment by DNRC, FWP, the Land Trust, and the US Fish & Wildlife Service to look for opportunities in Tarkio Section 35 to transfer to DNRC. With that transfer of ownership in the future, Mineral County feels comfortable with the commitment the parties have made. Mr. Erickson asked for approval.

Greg Tollefson, Five Valleys Land Trust, said we are extremely pleased that we have been asked to step in and take the role of the River Network in facilitating this transaction. And we have assumed the commitments the River Network previously made to the Mineral County Commissioners and the residents of Mineral County to assure that the concerns for the private tax base in Mineral County will be addressed. One of the commitments we have made is to enter into a subsequent land exchange with DNRC which will move Section 35 into the hands of DNRC in exchange for a combination of isolated parcels downstream which will then be made available for private acquisition. Thereby providing increased tax revenues to Mineral County and satisfying their concerns. We are very pleased to be involved.

Mr. Erickson said I just want to clarify, when I mentioned approval for that second phase, we are not asking you at this time to approve that exchange. We are just letting the Board know that that commitment has been made.

Mr. McGrath said, for further clarification, as has been mentioned this is an extremely complex transaction, one of the parties of the transaction is NorthWestern Energy. The Natural Resource Defense Program has been involved in this project as well because of issues with Milltown Dam and NorthWestern Energy. This transaction has been approved by the Bankruptcy Court in terms of NorthWestern Energy, and it is part of a settlement the state and federal government has with NorthWestern Energy regarding future removal of Milltown Dam. It is a good deal.

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Mr. Morrison said he would like to thank FWP, Forest Service, Five Valleys Land Trust, and NorthWestern Energy for working together on this. Alberton Gorge is a state treasure, a great stretch of water. This is an example of how sometimes a busy team of governmental and private landownership land entities can come together and coordinate a way to do something really good. Congratulations, it will benefit everyone.

Mr. McGrath moved approval of the Alberton Gorge Land Exchange. Seconded by Mr. Morrison. Motion carried unanimously.

604-4 REAL ESTATE PROGRAMMATIC EIS

Mr. Clinch said this is going to be a presentation of our Programmatic Environmental Impact Statement (PEIS) draft plan. As this Board is well aware, issues associated with real estate management of the school trust's 5 million+ acres of school trust land is an issue that has garnered increased scrutiny and analysis over the last several years. As a result of those concerns, the department embarked upon a PEIS process a number of years ago and those labors have come to fruition. Today we have a presentation of that draft plan, we will be soliciting public comment on it, and bringing it back to the Board for approval.

Jeanne Holmgren, DNRC, presented a power point show and gave an overview of the project containing the history, purpose, objectives, alternatives, implementation, and timelines. She said the Trust Land Management Division has prepared a Draft PEIS to analyze and disclose impacts, and compare alternative management strategies for real estate management on state trust lands. The Final EIS will identify a preferred alternative that will become the Real Estate Management Plan. The Plan will provide the division's Real Estate Management Bureau (REMB) with consistent policy, direction, and guidance in it's management of real estate activities on trust lands. The objectives of the PEIS are to increase revenue, comply with MEPA, have an efficient decision making process, simplify project level evaluation, involve the public, and compliment local government process and growth policies. Ms. Holmgren displayed charts that showed the proportion of trust lands eligible for development by land office areas, and a revenue summary by bureau. There are five alternatives, each would share proportionally in the future growth/development potential of Montana; all land uses will be subject to local land use regulations; residential growth will be achieved primarily through sales; commercial industrial growth will be achieved through leasing; and conservation strategies would be achieved through leasing or the purchase of development rights rather than easements. If a land base of a region has 10% trust lands, the REMB would attempt to attract 10% of the real estate market related to commercial, industrial, and residential uses.

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- Alternative A continues the management of trust lands under the current program, development would be less than the proportionate share of new growth, gross annual income would be \$3.8 million, and average annual rate of return would be 2.76%.
- Alternative B represents a diversified portfolio. It would attempt to keep pace with the real estate market; the REMB staff would likely increase by 3 FTE, it would need development funds up to \$500,000/year to improve land entitlements; annual gross revenue would be \$4.7 – 5.3 million, and the annual rate of return would be 4.6 – 5.13%.
- Alternative B-1 represents a diversified portfolio – with a conservation priority. It would provide that trust lands share in growth of the land area to support the increase in population. Residential development would decrease 50% of Alt. B.
- Alternative C would capture a higher share of real estate markets on trust lands. The REMB staff would likely increase by 1 FTE over Alternative B, development funds of \$1,000,000 would be needed to improve land entitlements; average annual gross revenue over planning period would be \$6.4 - \$7.8 million, and average annual rate of return would be 5.48 – 6.27%.
- Alternative C-1 would capture a higher share of real estate markets – with a conservation priority. Trust lands would share in growth of land area to support the increase in population and residential development would decrease 50% of Alt. C.

Alternatives B-1 and C-1 have conservation priorities which means we would try to market property adjacent to Conservation Easements and wilderness areas.

The effects could be that 5,188 acres to 34,123 acres would be converted to commercial, residential, and industrial uses through 2025. The chosen alternative would comply with local, state, and federal regulations; and provide a substantial increase in revenue and rates of return. The timelines for this project: draft PEIS will be out for public comment for 60 days, June 21 – August 20, 2004; Final EIS; Record of Decision. The project will return to the Board of Land Commissioners for approval of the preferred alternative that will become the real estate management plan at their November 15, 2004, meeting.

Mr. Morrison said the commercial and residential development issues are growing around the state in the suburban areas and the most dynamic discussion of this around the state lately with respect to our properties in Whitefish and we've had our community committee that has formed and been negotiating first with David Greer now with his successor, and it is very much a process in progress. How do you envision the options

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in the DEIS affecting what is going on in Whitefish, and has there been any specific discussions about that in the course of putting this together?

Ms. Holmgren said I envision and see that what is happening in Whitefish is the programmatic plan working hand in hand. That is exactly what we want to do in part of the implementation of the programmatic plan, to work with local communities, local planning offices, in growth policies.

Mr. Morrison said Whitefish is a place where we run into the most local resistance, or at least the most local vocal input about proposals for developing our holdings, and it seems to me it is just an example of what there is a lot more to come as we deal with these issues around the state. One of the things that I think is critical as we involve ourselves in suburban development issues is a healthy respect for the people in the local community and have them fully invested in the vision for developing the lands and making sure it is consistent with their idea of what they want their community to look like.

604-6 APPROVAL OF THE OIL & GAS LEASE SALE (Held June 2, 2004)

Mr. Clinch said the department holds quarterly oil and gas lease sales. At the June sale, 83 tracts were offered for lease yielding \$470,298.00. The high competitive bid was for \$175.00/acre on one tract in Blaine County, and there were substantial other tracts with competitive bidding reflecting some of the increased oil and gas activity we are seeing in Eastern Montana. Mr. Clinch recommended approval of the June 2004 oil and gas lease sale.

Motion was made by Mr. Morrison to approve the lease sale. Seconded by Mr. McGrath. Motion carried unanimously.

604-5 LAND BANKING – INITIATION OF RULEMAKING

Mr. Clinch said during the last legislative session HB 223 was advanced and supported by Board members, and has affectionately been known as Land Banking. Since the passage of HB 223, the department has been engaged in negotiated rulemaking. Ms. Holmgren is going to give an overview of that process and introduce the draft rules that emerged from that process.

Ms. Holmgren said HB 223 was passed in 2003 and it's objective is to diversify land holdings using a five-year program. Only lands nominated by the Board, DNRC, or a lessee will be considered. The rulemaking committee devoted a lot of time to this process. In 1989 the legislature passed a law that provided for our residential lessees to purchase their cabin or home site. Essentially at that time the Land Board denied most of those applications because we didn't have the ability to bank that money and

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repurchase replacement property. The Land Board explored the concept of deferred land exchanges. There was a study on access, and an audit was conducted on the land exchange program in 2001. It was a recommendation of the audit that we seek the ability to be able to provide for the replacement and disposition of lands. The objective of land banking is to diversify land holdings, maximize revenue returns, minimize risks, and increase public access to our properties. There is a statute of limitations - this is a five-year program. Trust lands can only be nominated for sale by the Board members, the department, or the lessee up to 100,000 acres. Seventy-Five percent of those acres have to be isolated, and 25% can be non-isolated. We can only sell up to 20,000 acres before replacement properties are purchased, and lessees will have preference rights. Purchasing properties will go through oral auction. Replacement properties must generate equal or greater income.

Harold Blattie, MACO, said the committee has a very diverse membership. It brought forth various perspectives of the group they each represented and made the representations very well. Every member of the committee actively participated. The fact that there is a largely consensus document is a tribute to the committee members willingness to work and negotiate. We bring to the Board today a product that represents many hours of work. One of the challenges the committee faced was dealing with what is rulemaking and what is legislation. In the legislation that implemented this bill it defined "isolated parcel" as a parcel that did not have legal access. That's pretty straightforward and simple. But we spent a great deal of time trying to determine whether the committee should expand upon that or deal with some particular issues in another manner. Ultimately, we did choose the latter. The challenge being that it wasn't our responsibility to propose draft rules to the Board that went beyond the scope of rulemaking authority. Two things I'd like to mention in that regard as a representative of counties, they have a concern that after land is sold and the state acquires additional lands, what the effect will be upon the tax base in that county. They wanted to insert into the rule limitations upon land that could be purchased, however, in the end we determined that that was beyond the scope of rulemaking and if such an effort was to be done, it would have to be done legislatively. The maps provided to the Board demonstrate isolated parcels in one manner or another. There are parcels wholly surrounded by other public lands, parcels that are wholly surrounded by private land held by one landowner, and parcels with multiple landowners. I don't know if it shows parcels that are surrounded by lands within a Conservation Easement but that is another class of isolated parcel that there was a significant amount of discussion on as to an outright prohibition in the rule of selling a state land parcel that was surrounded by a CE. Selling a CE parcel through the MEPA process was determined to be significant to threatened and endangered species. We did come up with a good resolution to that. Proposed New Rule III has three subsections and the language the committee adopted was that the Board may only sell a parcel that was wholly surrounded by other public lands if the Board provides a compelling reason. The committee did not want to place an unreasonable obligation or burden upon the Board in the determination of providing a compelling reason to sell

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those particular lands. He said they created a document that they feel will withstand any legal challenges. He urged the Board to approve the rules.

Ms. Holmgren showed an example of a sale flow chart that matches the rules as they are proposed today. It represents the basic structure of a sale. The sale will come before the Land Board three separate times. The process can be initiated by the Board, the Department, or the lessee. When we receive a nomination for a parcel, it will be evaluated according to the criteria identified in the proposed rules. If it is a parcel that is suitable and meets those criteria, then we will conduct a MEPA analysis on that parcel. Then we either bring it to the Board for further consideration and move on through the process, or we determine that it is not suitable and we do deny that application. There is an appeal process in the event the department determines the parcel to be unsuitable, applicants can bring that before the Land Board and appeal it. Once the parcel is approved by the Board, we will obtain an appraisal, bring the parcel back before the Board to set the minimum bid for oral auction. Once this is completed, that parcel will come back to the Board for final approval. The acquisition side is similar to the sale side, except for the fact that it will come before the Board twice. Anyone can nominate a tract, there are no limitations for nomination. Once the department receives a nomination to acquire property we then bring that nomination through the suitability requirements, we determine it's suitability and if it is something we want to bring into our portfolio. If we determine it is suitable we bring it through the process, determine if it is generating equal or greater revenue for the trust, public hearings will be held, and it will come before the Board for final approval. Once we have completed the rulemaking process, we will have a handbook that will be available for lessees and members of the public to become familiar with the process, how to make application, and what we're looking for. We will hold a series of open houses to present this program to the lessees; interested members of the public.

Mr. Clinch said if the Board approves the request before it today authorizing the department to go forth with rulemaking, that would initiate the formal rulemaking process, notification to the Secretary of State's register, and start the time clock for that. As you've identified, we will be accepting public comment and holding hearings, and as a result we will take those comments and come back with a final rule proposal for approval from this Board. Some of the members in the negotiating rulemaking committee were not in concurrence with the items presented today relative to the proposed rulemaking package. On one or two items there wasn't complete consensus and the group determined early on that when they get to the final product, the minority group may want to present their proposals to this Board.

Janet Ellis, Montana Audubon, said we didn't get everything into this process that we wanted, but we do think it is a fair place to start in rulemaking. The one issue we felt where there could be stronger language is under New Rule III, we wanted stronger language in three instances so you would proceed with only the utmost caution. Those three circumstances are: the lands wholly surrounded by other public land; wholly

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surrounded by a Conservation Easement; and in instances where MEPA determines there will be a significant impact to threatened and endangered species. We offered specific language and only two words in each sentence would have to be changed. The language is a little stronger, it doesn't prohibit the department from doing it but it will put more caution into the process in those unique circumstances where you should proceed with extra caution.

Julie Altemus, Montana Logging Association, said she was representing Ellen Engstedt, a member of the rulemaking process who couldn't attend the meeting today. She read from Ms. Engstedt's letter.

"I was a participant in the negotiation rulemaking committee on land banking. On behalf of the Montana Wood Products Association (MWPA), I thank the DNRC staff, Jeanne Holmgren and Candace Durran, for the professionalism and patience during this process. My appreciation extends also to John Moore for his hard work as facilitator. There were numerous meetings and a great deal of discussion about not only the legislation that passed in 2003 legislature, but about the philosophical idea of the state buying and selling land. The majority tried to stick with the bill language, but at times it was clear that there were those present who simply do not approve of the concept of land banking. I am not one of those. The MWPA firmly supported the legislation of the last session along with the entire Board of Land Commissioners. The proposed rules are probably too stringent to work as the legislation was intended, but hopefully the agency will attempt to test the waters with the purchase or sale of state land. Some of us tried our best to give the agency personnel some flexibility to allow the program to succeed. One issue voted on by the committee because consensus simply could not be obtained was Subsection (5) of draft Rule IV, page 12 of the report. The objectionable language to me is the last sentence of this subsection reading, "If the department conducts the checklist environmental assessment under MEPA, the department shall briefly explain in writing each conclusion of no impact." I voted with the majority against adoption of this language. My rationale for the objection is the precedent in the rules under MEPA this language would set. Agency analysis under MEPA should be kept as uniform as possible to adhere to the Model Rules. The reason the checklist is used is to avoid unnecessary and lengthy explanations of what is and is not an impact. If every "no impact" checkmark requires an explanation however brief, what is the purpose of the checklist concept? If someone wants to know the agency reason behind "no impact", the person simply needs to contact the agency. The solution would be to simply drop the last section in Subsection (5) because the agency in the part of the same paragraph is charged to conduct an environmental review of the parcel under MEPA. I hope you agree with my solution. Thank you for the opportunity to provide these comments."

Nancy Schlepp, Montana Farm Bureau Federation, said the Montana Farm Bureau thanks you for this opportunity to make public comment on the land banking process. As a member of the negotiated rulemaking team, I would like to commend DNRC, especially Jeanne Holmgren and Candace Durran, for their professional handling of the

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process. I would also like to acknowledge and thank John Moore for his many hours working as our dedicated moderator. The negotiated rulemaking process is a very interesting one, I learned an enormous amount about the art of compromise and creating cohesive decisions. It is pleasantly surprising how many issues an extremely diverse group was able to resolve and vote unanimously on. However, there were a few exceptions and we would like to take this opportunity to comment on them briefly. First, Subsection (1) of draft Rule III, the Montana Farm Bureau is pleased to have been on the majority seeing the positives of this vote which was the DNRC may sell such parcels of land that are isolated when certain things "are met" instead of "may not". There was a big discussion and it was our opinion that keeping the wording positive kept out a lot of ambiguity and would hopefully help clear things up and avoid law suits for the Land Board in the future. The other one was Subsection (5), of draft Rule IV, the Montana Farm Bureau voted in the minority on this issue. It concerned the checklist environmental assessment (EA) under MEPA. The majority stated that any finding of "no impact" on an EA checklist must have an explanation attached to it, and we are opposed to this. An EA checklist explanation would set a new standard for an EA checklist and make it a narrative EA instead. Our fear is that this new standard has a potential of changing the standards for EA checklists across the board, including other DNRC decisions and other state agency decisions. The Montana Farm Bureau strongly feels that creating a new standard through rulemaking is wrong, writing statute or changing definitions is the sole responsibility of the legislature, not a rulemaking committee. We ask that you not write your final draft rules with this inconsistency included.

Jay Bodner, Montana Stockgrowers Association, said we were also invited to be a participant in the rulemaking. Ray Marxer was our representative and I'd like to thank him, and also the DNRC for involving us in this process. This is an issue that we've always been involved in and very positive toward. There is a number of our lessees and members that have been very interested in this concept and more or less, just waiting to see how the details work out to see how they can be involved in this process. Really, the only thing I'd like to bring up is on Rule III. We also voted in the majority there, and think the present language provides the positive comments and positive attitude toward some selling of state lands. It also provides that the positive concept that we continue with this, we'll still address all the issues, but provides positive language.

Mr. Blattie said I would like to echo my concurrence with the remarks that Jay and Nancy made. And that I too, was in the minority on that situation, so I would like to urge your consideration of that particular section.

Mr. Morrison said he wanted to begin by asking a question on procedure. Mr. Clinch, would it be fair to say that the dissenters here are going to have an opportunity to have their opinions heard in the formal rulemaking process?

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Mr. Clinch said that's absolutely true.

Mr. Morrison said so all we're doing here it just approving the informal rules as prepared, and launching them into the formal rulemaking process?

Mr. Clinch said that's correct and then we will bring back the final proposal. At that time, the Board will have the ability to look at all the comments and various recommendations.

Mr. Morrison said he wanted to thank the people who were involved in this process. As someone who spent a fair amount of time in the give and take, and sometimes all out tug-of-war, during the legislative session in the preparation and passage of that bill, I know how contentious some of these issues can be. The people who worked on this process did a fantastic job, and in fact, I hope when the legislature convenes in 2005 they are as successful at the art of compromise and working toward consensus policy as you have been. We have 131 different rule decisions here that were made on a consensus basis. And so what little dissent we heard here today is really an exception to what otherwise was a tremendous consensus effort by a large group of diverse organizations that were involved in this process. Many people thought at the beginning of this process that there was no way that we were even going to be able to get these groups to sit down at the table, much less agree upon anything. My hat is off to you. Thank you Jeanne, Candace, and John especially for your work and to all the groups: the Montana Wildlife Federation, Skyline Sportsmen, Montana Audubon, Montana EIC, Montana Stockgrower's, Montana Farm Bureau, Wood Products Association, Association of Counties, Trust Beneficiaries represented by the School Board, University of Montana, Montana State University, and Montana Tech. Page 26 of the report lists all of the organizations. It has just been a great team effort. I thank you very much. I want to also reiterate my faith in the process. I think that this will allow us to modernize our state land management process to provide more public access for sportsmen and receptionists, more options for landowners and more revenue for the school trust. It will reduce the number of isolated parcels and acquire land that is more valuable to our trust and it will allow farmers and ranchers to consolidate their holdings and protect them from wealthy out-of-state speculators. So this is really has the potential to be a win-win program and the great efforts and professionalism of the people who worked on preparing these rules takes us a giant step forward in that process. Thank you very much.

Lt. Governor Ohs said he too would like to echo the congratulations to the participants. I know how potentially contentious the sale of state lands can be no matter how it is structured and I'd like to congratulate all of you for reaching your consensus. In my mind we will duly note the exceptions and we'll take a close look at those. At this time I would propose that we move the draft forward to full rulemaking.

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Motion was made by Mr. McGrath to initiate the rulemaking process. Seconded by Mr. Morrison. Motion carried unanimously.

604-7 STAINSBY V. DNRC

This is a quiet title action being brought by Craig A. Stainsby relative to lands adjacent to the Missouri River in the City of Great Falls. The department has reviewed the factual allegations presented in this case and has come to the conclusion that the State of Montana has no possible claim to the disputed lands. Consequently, we're bringing this forward for approval to give the department permission to file the Disclaimer of Interest relative to these disputed lands in this action. Mr. Clinch requested approval.

Motion was made by Ms. McCulloch to approve filing a Disclaimer of Interest. Seconded by Mr. Brown. Motion carried unanimously.

604-8 FISH STICKS SALVAGE TIMBER SALE

This proposed sale is located 8 miles west of Alberton, Montana, and involves the harvest of timber from 399 acres in two harvest units. The projected volume is 10,809 tons of sawlogs. The purpose of this sale is to recover the value of timber damaged by the Fish Creek fire of August 2003 and to promote conditions favorable to the recovery and regeneration of this area. This is the final salvage sale for this burned area. Access is across existing roads. Temporary road use permits have been obtained. Approximately 4.35 miles of road construction is required. There are no historical or cultural sites identified. Public involvement was solicited through newspaper notice and letters sent to interested individuals and organizations. Mitigation measures were incorporated into this sale. No significant environmental impacts will result from the harvest. Approximately \$120,196.08 will be generated in revenue. An additional \$10.60/ton Forest Improvement Fee will be charged.

604-9 PATCHTOP TIMBER SALE

This proposed sale is located 50 miles southeast of Dillon, Montana, and involves the harvest of timber from 106 acres in five units. The projected volume is 7,370 tons of sawlogs. The purpose of the sale is to maintain a long-term sustainable natural resource while promoting forest diversity and maintaining a semblance of historic conditions. Access is across existing roads. A temporary right-of-way has been obtained. Approximately 2.8 miles of road construction and 2.1 miles of reconstruction are required. Upon completion of the sale all disturbed soils will be grass seeded and new road construction will be closed. There are no historical or cultural sites identified in the area. Public involvement was solicited through newspaper notice and letters sent to individuals, adjacent landowners, and organizations. Mitigation measures were

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addressed in the EA. No significant environmental impacts will result from this harvest. The projected revenue is \$123,816.00, with an additional Forest Improvement Fee of \$2.31/ton charged.

604-10 SWEENEY CREEK TIMBER SALE

This proposed timber sale is located west of Florence, Montana, and involves the harvest of 310 acres in four harvest units. The volume is 7,282 tons of sawlogs. The purpose is to decrease the relative density of ponderosa pine and proportion of Douglas-fir; enhancing growth and reproduction of the largely fire-adaptive seral tree species such as ponderosa pine and western larch; and retaining coarse woody material as standing snags. Access to the sale is across existing roads. A temporary road use permit has been obtained. Approximately .35 mile of road construction and .95 mile of reconstruction is required. Upon completion of the sale, 1.76 miles of road will be obliterated and the disturbed area will be grass seeded and covered with slash. There are no historic or cultural sites identified. Public involvement was solicited through newspaper notices, notices posted along the roads within the proposed sale area, letters sent to landowners, special interest groups, and interested individuals. No significant environmental impacts will result. The projected revenue is \$160,954.30, with an additional Forest Improvement Fee of \$6.63/ton charged.

Mr. Clinch said while each of the three sales are individual and have their own set of circumstances and silvicultural prescriptions, he recommended the Board act on them collectively.

Motion was made by Mr. Morrison to approve the Fish Sticks Salvage, Patchtop, and Sweeney Creek Timber Sales. Seconded by Mr. McGrath. Motion carried unanimously.

604-11 APPROVAL OF RIGHTS-OF-WAY APPLICATIONS

Mr. Clinch said this month there are 86 requests for rights-of-ways. It is important to note that application #12404, by Mr. Boutilier, has been separated from the packet and will be addressed individually after consideration of the other requests. Within this package is an amendment request from the Department of Transportation to expand Highway 93 near Kalispell. At the time of the grant of the easement, the state committed to giving access control to DOT, but the DNRC reserved four access points along the highway for commercial purposes. This is for approval of the amended easement request for the relocation and exchange of access control points. The other applications in the packet are #12393, 12394, 12395, 12396, 12397, 12398, 12399, 12400, 12401, 12402, 12403, and 12468 are from Triangle Telephone Co-op for buried telephone distribution lines; #12410, and 12411 are from the Montana Department of Transportation for highway construction and maintenance; #12448, 12449, 12450,

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12451, 12452, 12453, 12466, 12467, 12469, 12470, 12471, 12472, 12473, 12474, 12475, 12476, 12516, 12517, 12518, 12519, 12520, 12521, 12525, 12526, 12527, 12528, 12529, 12530, 12531, 12532, 12533, and 12534 are from Hill County Electric Co-op for electric distribution lines; #12479, 12480, 12481, 12482, 12483, 12484, 12485, 12496, 12487, 12488, 12489, 12490, 12491, 12492, 12493, 12494, 12495, 12496, 12497, 12498, 12499, 12500, 12501, 12502, 12503, 12504, 12505, 12506, 12507, 12508, 12509, 12510, and 12512 are from Nemont Telephone Co-op for telephone distribution lines; #12511 is from Clinton Simpson for a private access road for farm/ranch operations; #12514 is from Grosskopf Family Trust for a private access road for single family residence; #12522 is from James and Diana Brady for a private access road to single family residence; #12523 is from Tom and Gena Allen for a private access road to single family residence; #12524 is from Range Telephone Cooperative for buried telephone distribution line; #10637 is from Northern Telephone Cooperative for buried telecommunications cables; #12535 is from Plum Creek Timberlands for a perpetual non-exclusive easement.

Motion was made by Mr. Brown to approve the rights-of-way package. Seconded by Ms. McCulloch. Motion carried unanimously.

604-12

RIGHT-OF-WAY APPLICATION – BOUTILIER

Mr. Clinch said this is the department's recommendation on the right-of-way application of Boutilier, #12404. This is the third consecutive month that we've had this item on the agenda. By way of history, this item was before the Board three months ago and the Board took no action. At that time, there were some issues and we later learned we had incomplete information. Through a more thorough analysis, we have revisited that issue and come back with a different proposal. Initially, when the application came before the department it was analyzed and a determination was made that there were no significant environmental impacts, there were two issues that gave the department some pause. The first was a potential inconsistency with the department's private driveway policy about not recommending approval of an easement across state land if there is access available to the applied-for properties through the applicant's own personal property. Relative to this particular application of the Boutilier property, early on in the process the department was under the assumption that one could access the intended place of residence by merely extending Mr. Boutilier's driveway above or below his current residence. Since that initial analysis, we met with Mr. Boutilier and with engineers from Morrison-Maierle, whom he had contracted to design a potential road. We have had extensive site visitations and learned that there were two possible ways to extend the driveway from Mr. Boutilier's house by the construction of a retaining wall below. But we also learned while that was technically feasible, it would necessitate the removal of the septic system from his house and total relocation and reconstruction. The department came to the conclusion that that was probably an unreasonable request to make. In the event that the road was determined to go around the higher portion of

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Mr. Boutilier's property, the current geography of that landscape would require that the road be an increased slope of his current 25% driveway with a short stretch of up to 29% grade. In addition, that potential location impacted an existing water well and a pump site. Consequently, we determined that there really was no reasonable access beyond Mr. Boutilier's house through his current road to access the property in question. Upon looking closer at the department's private driveway policy, the language in that policy envisions discretion on the part of the Board in making a determination as to whether it would strictly apply that or not. The second issue that came up early in the MEPA process and the scoping and in our determination, was that if a private driveway across the state land added or detracted value to the school trust land. As the application was originally presented months ago where the road would hug the west boundary of the state's ownership, we were under the impression that that would have minimal utility of any future uses of state land and consequently added no value other than the revenue that would be received for the sale of it. Since then, we had a discussion about uses of state school trust land, the issue about public access, and would it be appropriate to develop a public access point – a parking lot, and what would the appropriate location of a road be so it would serve Mr. Boutilier's needs, public trail needs, as well as be of some utility for future uses with whatever the long term use of that tract would be. We spent a long time in the last month analyzing that situation and visiting with a number of affected parties. Garry Williams, manager for DNRC's Central Land Office, visited with people from the US Forest Service who manage a tract of land immediately to the south, some of the land that is commonly used by recreationists and also part of the land that has the Mount Helena Trail System on it, with individuals from the Prickly Pear Land Trust which are heavily involved in public recreation, and he visited with people from the Helena City-County Planning to learn about potential requirements we should know about if any sort of development ever occurred on that tract of state land. As a result of those discussions, we learned that there appears to be little interest for access to the school trust tract from that existing point of entry. While people do access there, there is not a great deal of interest by the Prickly Pear Land Trust or the Forest Service to establish a trailhead at that location to connect in with the Helena Trail System. We did learn that they are interested in accessing the existing trail system further to the east off of Le Grande Boulevard. As I understand it, through discussions with all of the affected parties, Mr. Boutilier has volunteered to participate with those entities to secure access and easements across state land to provide for an enhanced trailhead off of Lombardy Drive to access that trail system.

The department has come to the conclusion and is recommending to the Board to proceed with this application to grant an easement to Mr. Boutilier for a single family dwelling. It is specific that we talk about the single family dwelling because in earlier discussions there was concern that this may lead to a subdivision, more residences, and more traffic. I want to make perfectly clear that the recommendation and the deed document, should the Board grant approval, will be specific to a single family dwelling. For members of the public who are concerned, that cannot be altered without further reconsideration by the Board. The easement is for a 14-foot road on a 30-foot right-of-

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way built to standards specified by the department and would be subject to those construction standards and design. The amount is the full market value of the appraised land, a little bit in excess of \$10,000. Mr. Clinch said he feels comfortable that the analysis performed by the department as well as the evaluation of the Board's discretionary role, and all of issues that have been raised by neighbors and the public, are addressed and that there are no significant environmental impacts. In addition to the construction of the road, we've had discussion at this Board meeting numerous times about public access. As you may be aware, the state land tract is fenced and while there is legal public access there there has always been a little bit of contention about parking when occasionally any member of the public tries to access there. In the past, we've had signs posted identifying it as a no parking area, to clarify that as part of the easement package, we are directing that a small parking area be fenced out off of the public road, so if anyone parks there they will park off the road and not impede traffic. However, we don't see it is necessary that any developed parking area be constructed. It will be a minimal parking area, and it is not one that we are proposing that should or would increase public access. We've learned through this process that the vast majority of recreational interest really lies off of Le Grande Boulevard and we're hoping the arrangement between Mr. Boutilier, the Prickly Pear Land Trust, and the Forest Service will come to fruition in the months ahead and the recreational access will be focused over there. Mr. Clinch requested approval of the request for rights-of-way.

Tim Gardner, resident of Lombardy Drive, said he is deeply concerned about the issues regarding Mr. Boutilier's application for this right-of-way. One of the points in the original Environmental Assessment mentioned that a private driveway would enhance the value of land trust lands thereby making it more attractive for sale for a subdivision. Is that correct?

Mr. Clinch said I'm not familiar if that specific language was in a previous EA but certainly it is a statement the department believes is true. A properly located road built to proper standards certainly could have some value in the event that a portion of that tract was to ever undergo some other kind of development.

Mr. Gardner said well that brings me to my next point. I'd like to distribute a letter I received from the Department of Fish, Wildlife and Parks from Gayle Joslin, a staff biologist there. This addresses some of the secondary impacts that a private driveway would have in this area. There is a great deal of detail in this letter from Ms. Joslin but if you would direct your attention to the two maps attached to the back of this letter, one has bright yellow dots on it. They represent the elk wildlife range in this particular area. Squarely in the middle of that map is a blue parcel which is the parcel in question. So you can see that there are elk that frequent this area. The second map describes a number of wildlife movement corridors. On the far right side there is a red line that is determined to be a wildlife movement corridor that traverses this parcel. There exists, besides the information Ms. Joslin has brought to light, a Memorandum of Understanding (MOU) between the DNRC and DFWP dated December 2002. In

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summary, this MOU describes the rules for information exchange between these two agencies that enable a better decision making process for the disposition of state lands. In this case, DFWP was not contacted. This oversight has contributed to some serious errors on the checklist Environmental Assessment (EA). Quoting Ms. Joslin, a professional biologist employed by our state, "There is hard evidence that at least items 8 and 9 of the checklist EA are incorrect." These items refer to the impact on wildlife and species of special concern. Ms. Joslin asserts that this big parcel is a critical part of elk winter range. Notice that in her letter she uses the phrases "critical" and "vitally important" when referring to this winter range. The maps show that not only is there an abundance of elk inhabiting this parcel, there is also wildlife movement corridor traversing this parcel. My own direct observations indicate that the proposed driveway route is directly through an area used for beds, cover and grazing. There are other problems with the EA that are worthy of note. Ms. Joslin expressed a decision to me about the survey methods and data required to substantiate the response in item 7 regarding vegetation cover quantity and quality. Item 27 of the EA is supposed to contain a decision of note that explains why a checklist EA was performed instead of an Environmental Impact Statement (EIS). I believe that Ms. Joslin's facts constitute significant new information. According to MEPA, the DNRC is not required to prepare a supplemental review. This time I would like to see the review prepared with the cooperation of DFWP and Ms. Joslin according to the aforementioned MOU. In summary, I suggest the Board has the following options: (1) it can deny the private driveway easement request according to DNRC's original recommendation and take no further action; (2) it can grant the private driveway easement request and risk protracted legal entanglements and MEPA compliance and other environmental issues; or (3) it could consider alternative proposals that enhance the value of the land trust while also avoiding MEPA compliance issues. The sale of this parcel is not one of the issues before the Board today, the power of granting a private driveway easement will change the valuation of this parcel such that it becomes attractive for sale for subdivision potential. This is a financial option the Board must consider. I believe there are other options worth pursuing to satisfy the land trust mandates while also avoiding environmental issues. For example, the Prickly Pear Land Trust has expressed an interest to Ms. Joslin in either acquiring the parcel or in facilitating a land swap with the Forest Service. A land swap makes sense given the adjacency of this parcel to Forest Service land. Given the elk winter range designation, perhaps an organization such as the Rocky Mountain Elk Foundation may be of assistance in facilitating an exchange to the benefit of the land trust. I am only the spearhead of this effort, however, these things take time and I'm a little late into the game. I ask that the Board either deny the private driveway easement today or postpone a final decision on this issue until such time as a viable alternative can be found.

Dwight Hiesterman, resident of Lombardy Drive, said my land abuts the state land. I want to say first of all that I am against this current proposal. I feel, however, that I must comment about some of the comments made by Mr. Clinch as well as the EA statements. First, it was stated in there that this would not affect our visibility, however,

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our homes front Lombardy Drive, especially those to the south and east. Our views are the state school trust land. Secondly, as mentioned earlier, it is a habitat for elk and deer and certainly both have been noted to bed in the winter 100 yards from my backyard. Also, it is habitat for red tail fox. The comment about the "no parking" sign, it was put up by Mr. Bosley who used to live there and the reason was because both he and I got tired of late night parties that would occur in that area. This also happens to be adjacent to his well that pumps water to his private residence. I think there is a good reason for the "no parking" sign and it also corresponds with the "no trespassing" signs that were located on state land. The escalated cost of the road, not including the noted donations to Prickly Pear Land Trust for further trailhead development, amount to \$10,000, some of us think it is in the range of \$20,000. That seems to be a lot of money to trade off for rearranging a septic system. How could this equal the cost of that? Is there another reason? We just heard about the development of state lands, and it seems that when you put in a road such as this it will be easy to develop this area. In addition, there is concern about trailheads. Well, people who have walked on the land can see that there is indeed a road that goes up the middle of his parcel, across the gully that currently is in the middle, and comes out to the east of my place. There is also an old water aqueduct along the hillside which connects to Lombardy Drive and circles the hill and will indeed engage the Mount Helena trails. I think that more research into this area is needed before we pass on this resolution before the Board. I've watched Mr. Boutilier go to and from his corrals on the current road that is there and I really think that it is a mistake for this to be a non-gravel road. We had in February a significant snowmelt and had sheets of water coming down our hillside, it comes into a drainage that goes through my property and across Lombardy Drive. This will impact a road that is non-gravel in place there. Secondly we also have significant rainfall from storms which can bring down a significant amount of water. In other words, I would request that this be put on hold until further research can be obtained, especially if there is significant concern about maintaining and accessing a trailhead for the Mount Helena area.

Greg Jackson, resident of Lombardy Drive, said my property also borders the state land. I have another neighbor who was unable to attend today, and he ask that I distribute a letter to you, it is from K.C. Hill, an executive with AAA. As indicated in my previous appearance here, I object to the granting of this easement. Essentially, my reasons for this is that regardless of what has been stated today, it is very clear that this proposal does not meet the private driveway evaluation criteria. I do not believe there has been a demonstration that this will actually enhance the school trust asset value. But more importantly, it is very clear that Mr. Boutilier purchased the property, the 77 acres, full well knowing that there was no legal access to that portion of the property. While it may be difficult for him to access the portion that he would like to divide out, it is very clear that that could be accomplished. And as a consequence, it is clear under the driveway policy that this type of driveway easement is discouraged. The second objection I have, particularly in light of the recent information from the DFWP, is that the Board still has incomplete information. I believe contrary to what has been represented,

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there is a significant environmental impact as clearly demonstrated by the letter from Gayle Joslin. The MOU by and between DFWP and DNRC has not been complied with. It is very clear from reading the information that this is not only a critical elk winter range habitat but additionally, a significant wildlife corridor. What is also indicated is that it is home to some 80 elk whose roots have been monitored through radio collaring, there are 28 different species of animals located on the state land property, there are 54 species of birds, and abundant flora. This is not addressed in the EA which has been provided to us. If you look at the assessment, you can see that in certain items in which these things should have been addressed, particularly items 7, 8, and 9, there is merely a generic statement that no impacts are expected. But there is no documentation for the conclusions that have been reached. If you go through the MOU, it is very clear that DNRC did not do anything required of it in the MOU. Frankly, there are serious concerns in regard to the environmental impact that should be touched upon and evaluated very thoroughly. One of the other considerations is in our Montana Constitution, Article 9, Section 1, our Constitution has provided us as citizens with great protections for the environment. And it provides duties upon the state to see that there is not an unreasonable depletion and degradation of the environment. It is very clear from what DFWP has provided, that that would occur here. My last comment is that in the previous hearing here, Mr. Boutilier had indicated that, if granted, he would place his land in a Conservation Easement. While I am opposed to the granting of this, if it is granted I note that in DNRC's letter of recommendation, it is not included as a condition precedent to the granting of the driveway access. I am opposed to this.

Doug Boutilier, landowner and applicant, said I am a lifelong resident of Montana and am well aware of the impacts to elk and deer. A good share of the elk winter on my property also. There is no water on the state land, the only water is the well I put in. I don't know how many deer get killed on the highway, but if the easement is granted I intend to develop something for the deer to drink out of so they don't have to cross that creek. A year ago I began this process. This is the second time Mr. Jackson mentioned that I bought the property knowing there is no access to it. When I bought the property I understood that you could access through state property if you go through the process that I have been going through for a year. There is no way across my property, that has been stated over and over again by professional engineers. I don't know if the road will enhance the property I surely don't feel like it will decrease the value either. Where the road goes is not important to me, that was decided by the DNRC, its fine with me the way it is, it will take more money to develop it the way it is. We've already agreed to that and agreed on a price. As far as the value of that property, it was appraised at \$2,754/acre. Garry Williams had an issue with that, but we brought the price up to \$5,000/acre and I agreed to pay that. Finally, this is not for me, I have a home and I don't intend to leave it. My daughter Sarah and Cliff Wakefield are the ones going to use the access to that property. They are not going to be a detriment to the neighbors.

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Cliff Wakefield, applicant, said my wife and I are the ones who will be directly affected by this easement. This process has been going on for over a year now. We're seeking an easement across state land for a single family residence. As far as the environmental impact with the elk and deer, I am not a professional on that but it seems that a 14 foot wide road going through this particular piece of land isn't going to be a detriment to the elk and deer that stay there. It is nice to hear Mr. Hiesterman's testimony that he can see elk and deer from his place out his rear window he has a beautiful view of the state land, a lot of people don't have that. But with Mr. Boutilier's generosity as far as putting an access in to that state land, it would not only benefit the neighbors on Lombardy as far as having state land to view wildlife, but this easement would let everyone who wanted to access that land view deer, elk, the numerous species of birds and wildlife in that area. This is for the people in the state, not just for the people who live on Lombardy. My conclusion is I hope we get quick resolution and move forward with the easement.

Mr. Boutilier said one final thing I want to address, I did offer to put that under a Conservation Easement, with the remainder of my 90 acres. I have no intention of developing it further if the Board wants to put that as a condition.

Mr. Clinch said I feel compelled to respond to a few statements. First, this discussion about a letter from Gayle Joslin of DFWP and the identification of a variety of wildlife species, there is nothing in that that comes as a surprise to this department. As you know, we manage over 5 million acres statewide and we deal with a wide variety of complex issues with thousands of wildlife species. The decision maker in this case, Garry Williams, was well aware that mule deer occasionally inhabit that tract as well as an occasional elk, and other species. As I previously stated, in making thousands of decisions annually on a wide variety of management issues, our field staff are intimately familiar with that and take that information into consideration. Relative to the significant impact that this road may have on mule deer or an occasional elk that may wander that far south, I would appeal to those of you that live in the city limits and have wildlife invading the city, and contemplate as a society what you're intentions are going to be as you see more and more of that. I would remind you that none of the species mentioned, red fox, mule deer, or elk are threatened or endangered. None of them are being held to a specific standard to recover or to protect. Frankly, the location of the homes in that area probably have a more detrimental effect on wildlife than the proposed road will have. Relative to the issue brought up about adding a stipulation to the easement to require the applicant to place his property into a Conservation Easement, I think that is somewhat out of place and it is not a recommendation I would make. If Mr. Boutilier wants to do it, that is a decision he should make. Simply because it is not required action in order to mitigate any known effect that we have, it is not my recommendation that we stipulate that onto a deed. Without going into it any more, I would say the department stands behind its recommendation. We stand behind our EA relative to the no significant impacts, and I would continue to stand behind the recommendation to act favorably to this request before you today.

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Mr. McGrath said Mr. Boutilier, regarding the CE, you heard Mr. Clinch's comments that he wasn't sure it was an appropriate requirement for the Board to impose as part of the easement. If we do not impose such a requirement, is it still your plan and intention to put your property that is above into a CE?

Mr. Boutilier replied I'll do that, I don't plan on developing any more. The only way to get into my property to develop it would be off this easement.

Mr. McGrath said I think the issue would be that we understand that you don't plan to develop it, but if you sell the property?

Mr. Boutilier said let's just put it as part of the deal. I would just as soon it stay open space, I don't have any problem making it into a CE.

Mr. McGrath said yes. My understanding is your intention is to do that.

Mr. Boutilier said my intention is not the Board's recommendation, its not DNRC's recommendation, its Doug Boutilier's recommendation and willingness to do it and I plan to do it.

Mr. Morrison said what is the down side of including that CE in the deal?

Mr. Clinch said I don't know if there is a down side. You hear a lot about precedent setting. We are of the mindset that there is not an environmental impact to the wildlife that needs to be mitigated. So as long as it is perfectly clear that we're not doing this to mitigate an impact that we don't allege exists there I guess you could certainly do that. You could make the motion contingent upon Mr. Boutilier agreeing to do that and I can live with that. Its just not the way I want to get into the precedent of dealing with controversial issues that will mitigate or leverage a landowner into something that we don't believe was necessary for the alleged impacts.

Mr. Morrison said aside from the impact on wildlife though, it may have some attractiveness for the neighbors who are here today.

Mr. Clinch said I guess one could rationalize it and say it mitigates whether real or perceived a concerns by the affected public. The interesting thing here is, I am assuming Mr. Boutilier is going to convey title to his daughter and son-in-law for their two acres, this particular easement would be granted just specifically to that particular piece of property for a single family dwelling so unless there was future action, it couldn't even provide access to Mr. Boutilier's property. If the Board chooses to go that way, I am comfortable with that, particularly in light that Mr. Boutilier seems more than willing to do that.

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Mr. McGrath moved for adoption of the right-of-way request from Mr. Boutilier. He said so it is clear to the interested persons in the audience, his rationale is he thinks it is important that there be public access to public land. I feel quite strongly about that and am concerned about the action where parking has been precluded and access to that area has been precluded by landowners in the neighborhood. I have been out there several times, I do think it is an excellent parcel, it has potential for access to the Mount Helena Trail System, and it is important that there be some kind of provision regarding parking which has been discussed and will be part of this. I understand that it is inappropriate to be parking on that road, but I think that a small parking pad up into the state section is very important to allow for access onto this property. In terms of the condition of a CE for an adjoining parcel, I am not sure legally we can require that because it is not on the same parcel, but I do think that Mr. Boutilier is sincere, he has been talking about doing that all along. It is certainly a motivation for me that he has property up above that adjoins Forest Service property that it would be put into a CE. Again, I think it is public access to public land and that is what we are talking about here. That's why I am making this motion. Seconded by Mr. Morrison.

Mr. Morrison said we should explore this further. Why wouldn't we have the ability to incorporate that CE in this kind of arrangement as part of the consideration for deferring an easement?

Mr. McGrath said I think we probably could do that.

Mr. Boutilier said I'll do it on my own court, but I'll do it today. That way you don't have to vote on it, this way I chose to do it. I'll get whatever I have to do today, it'll be done by close of business today. You don't have to vote on it or require me to do it. I am volunteering to do it under my own accord. I'll have it done.

Motion carried unanimously.

PUBLIC COMMENT

None at this meeting.

Motion was made by Mr. Morrison to adjourn. Seconded by Ms. McCulloch.